

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H,
MARY DOE and MARY ROE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GRETCHEN WHITMER, Governor of the
State of Michigan, and COL. JOSEPH
GASPER, Director of the Michigan State
Police, in their official capacities,

Defendants.

No. 2:22-cv-10209

Hon. Mark A. Goldsmith

Mag. Curtis Ivy, Jr.

**PLAINTIFFS' MOTION
TO MODIFY BRIEFING SCHEDULE**

Statement re Concurrence

The undersigned counsel certifies that counsel personally spoke to opposing counsel on May 18, 2022, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief. Opposing counsel expressly denied concurrence.

On May 18, 2022, this Court entered an order requiring Defendants to file any answer to Plaintiffs' complaint, any response to Plaintiffs' motion for preliminary injunction, and any motion to dismiss within 14 days, i.e., by May 31, 2022.

Plaintiffs respectfully request that the Court modify the deadline to be 7 days from the date of the order, i.e., by May 24, 2022. In support of their motion, Plaintiffs state as follows:

1. This action was filed on February 2, 2022. Plaintiffs' counsel provided Defendants' counsel with copies of all pleadings on that date. Defendant Governor Gretchen Whitmer was served on February 14, 2022, R. 16, and Defendant Col. Joseph Gasper was served on February 16, 2022, R. 17.

2. Under the Court Rule, Defendants' first responsive pleading to the complaint, and Defendants' response to the motion for preliminary injunction would normally have been due March 7, 2022, for Defendant Whitmer, and March 9, 2022, for Defendant Gasper.

3. Defendants requested additional time to respond. Plaintiffs had no objection, but explained that Plaintiffs wanted to ensure that briefing and argument could be completed by early June, due to prior summer commitments of Plaintiffs' lead counsel, Miriam Aukerman. The parties agreed that Defendants' briefing would be due Monday, April 11, 2022, and submitted a proposed stipulated order setting that date. *See* Proposed Order Submitted March 1, 2022, ¶ 8.

4. On April 8, 2022, the Friday afternoon before Defendants' briefing was due, the Court held a status conference regarding issues related to selection of class counsel and ordered briefing on that issue. At the status conference, Plaintiffs

requested that the Court enter the stipulated schedule for briefing on the merits issues, explaining that lead counsel will be unavailable for several months this summer. Defendants acknowledged that their briefing in response to the *Does III* filings was almost complete. However, Defendants argued that the issues to be covered could change depending on how the Court resolved the class counsel issues, and Defendants did not want to have to submit multiple briefs. The Court suspended briefing in accord with Defendants' wishes. Scheduling Order, R. 31.

5. The Court has now appointed the undersigned as class counsel and has stayed the other putative class action. R. 34. As a result, the issues that the Defendants have to brief are the exact same issues on which they were prepared to file on April 11, 2022, until the Court stayed briefing three days before those briefs were due.

6. Plaintiffs' lead counsel, whose involvement is essential, will be unavailable from June 9 through August 9 due to a long-planned family commitment.

7. Under the current schedule, Plaintiffs will have a little over a week both to respond a motion to dismiss (of up to 75 pages, R. 31, ¶ 5) and to reply to a Defendants' brief on the motion for preliminary injunction (of up to 67 pages, R. 31, ¶ 4) before lead counsel's departure.

8. Plaintiffs' counsel therefore respectfully request that the Court require Defendants to file their briefs by May 24, 2022. That date is 111 days from when the

complaint was filed and Defendants first received the pleadings, and 97 days from service of the last Defendant.

9. Even on this revised schedule, it will be extraordinarily challenging for Plaintiffs to prepare responses to Defendants' voluminous filings within the short time before lead counsel's departure. It may well be that Plaintiffs will need to seek an extension until after lead counsel's return. However, that is hard to assess until Plaintiffs receive Defendants' filings.

10. Plaintiffs believe that it is important for this case to move forward as expeditiously as possible. If Plaintiffs are going to take on the herculean attempt to get this case fully briefed by the start of summer—which would allow the Court to review the extensive filings and schedule argument, if desired, in late August or September—Plaintiffs cannot wait until May 31, 2022 to receive Defendants filings.

11. Plaintiffs recognize that, depending on the complexity of Defendants' filing, it may still not be feasible for Plaintiffs to complete the briefing before lead counsel's departure. (An extension until several weeks after counsel returns would still be significantly shorter than the amount of time Defendants have had.) However, Plaintiffs believe Defendants' due date should be moved so that Plaintiffs can attempt to get the issues briefed in the next few weeks.

12. Defendants are in no way prejudiced by moving the due date to May 24, 2022, given that they were prepared to file these exact pleadings on April 11, 2022, six weeks before the proposed new due date.

WHEREFORE, Plaintiffs respectfully request the entry of an order setting Defendants' briefing deadline for any answer to Plaintiffs' complaint, any response to Plaintiffs' motion for preliminary injunction, and any motion to dismiss to May 24, 2022.

Respectfully submitted,

s/ Miriam Aukerman (P63165)
Miriam J. Aukerman
Rohit Rajan (AZ 035023)
American Civil Liberties Union
Fund of Michigan
1514 Wealthy SE, Suite 260
Grand Rapids, MI 49506
(616) 301-0930
maukerman@aclumich.org
rrajan@aclumich.org

s/ Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6824
dkorobkin@aclumich.org

s/ Paul D. Reingold (P27594)
Cooperating Counsel, American Civil
Liberties Union Fund of Michigan
Univ. of Michigan Law School
802 Legal Research Building
801 Monroe Street
Ann Arbor, MI 48109-1215
(734) 355-0319 - pdr@umich.edu

s/ Roshna Bala Keen (Ill. 6284469)
Loevy & Loevy
Cooperating Counsel, American Civil
Liberties Union Fund of Michigan
311 North Aberdeen, 3rd Floor
Chicago, Illinois 60607
(312) 243-5900 - roshna@loevy.com

Dated: May 18, 2022

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Hon.

**PLAINTIFFS' BRIEF IN SUPPORT OF
MOTION TO MODIFY BRIEFING SCHEDULE**

As set forth in the motion, Plaintiffs respectfully request that the Court set Defendants' briefing deadline for any answer to Plaintiffs' complaint, any response to Plaintiffs' motion for preliminary injunction, and any motion to dismiss to May 24, 2022.

Respectfully submitted,

s/ Miriam Aukerman (P63165)

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Dated: May 18, 2022

LOCAL RULE CERTIFICATION

I, Miriam J. Aukerman, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted material and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 points (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

s/ Miriam J. Aukerman (P63165)

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1514 Wealthy SE, Suite 260

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